No._____

# In The Supreme Court of The United States

OCTOBER TERM, 1968

THE PEOPLE OF THE STATE OF CALIFORNIA, by JAMES DON KELLER, District Attorney for the County of San Diego,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO,

Respondent,

RICHARD M. COPELAND, JR. and SANDEE L. PETERSON,

Real Parties in Interest.

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Petition for a Writ of Certiorari to the Court of Appeal, Fourth Appellate District, Division One, State of California, For the County of San Diego

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Real Parties in Interest pray that a writ of certiorari issue to review the opinion of the Court of Appeal, Fourth Appellate District, Division One, entered in the above-entitled case on May 17, 1968.

## CITATION TO OPINION BELOW

The opinion of the Court of Appeal, Fourth Appellate District, Division One, is reported at 262 A.C.A. 288. It is reproduced in the appendix to this petition at page

## JURISDICTION

The opinion of the Court of Appeal, Fourth Appellate District, Division One, was entered on May 17, 1968. A timely petition for rehearing was denied on June 14, 1968.[2] A timely petition for hearing in the Supreme Court of California was denied on July 10, 1968.[3] The filing date of this petition is less than ninety days (90) thereafter, wherefore jurisdiction of this court is invoked under 28 U.S.C., Section 1257.

## QUESTIONS PRESENTED

Can a judge or magistrate constitutionally delegate his duties to a clerk of the court in such a manner that a misdemeanor complaint and a warrant of arrest, subscribed for nighttime service, be issued without the clerk having any first-hand knowledge of the alleged offense and without the judge or magistrate ever having seen the complaint and warrant or signing the warrant or even having knowledge that the complaint and warrant existed or were ever issued?

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1. Appendix "A"
2. Appendix "B"
3. Appendix "C"

## CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the following portion of the Fourth Amendment to the Constitution of the United States: "No warrant shall issue but upon probable cause supported by oath or affirmation," [4] and that portion of the Fourteenth Amendment to the Constitution of the United States which states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor to deny to any person within its jurisdiction the equal protection of the laws." [5]

## STATEMENT OF THE CASE

On May 8, 1967, Real Party in Interest, Richard M. Copeland, Jr., failed to appear in Chula Vista, California, on his written promise to appear, for a California Vehicle Code violation of driving with a defective muffler. [6] The case docket or record was forwarded to the Municipal Court Clerk's office on the second floor of the San Diego County Courthouse located at 220 West Broadway, San Diego, California, approximately twelve miles from the Chula Vista, California, courthouse. On May 26, 1967, a municipal court clerk, M. Musser, stamped a preprinted complaint with a facsimile of her signature under penalty of perjury, alleging that she had "information and belief" of facts contained therein. The complaint charged Richard M. Copeland, Jr. with a violation of California

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4. U.S. Constitution, Fourth Amendment
5. U.S. Constitution, Fourteenth Amendment
6. California Vehicle Code, Section 27150

Vehicle Code Section 40508(a)[7] of failure to appear upon a written promise to appear. Three days later, May 29, 1967, an entry was made in the docket or record of the case, stating, "Deft. not appearing, 40508 VC complaint and warrant ordered; bail $25, 10; 3pa." [8] The same clerk, M. Musser, took a preprinted warrant for nighttime service, inserted Richard M. Copeland, Jr.'s name, stamped it with the judge's facsimile signature stamp and delivered the complaint and warrant to the Marshal's office. These acts were done without the judge ever seeing the complaint or the warrant or having any knowledge of their existence or issuance and execution. [9] The complaint, [10] the warrant and the accompanying bail assessment [11] were generated by a computer [11] located in another building at 1600 Pacific Highway, San Diego, California, approximately two miles from the Municipal County Court Clerk's office and fourteen miles from the Chula Vista courthouse.

On or about midnight, June 28, 1967, two sheriff's deputies were patrolling a remote area near Palm City, California, a few miles north of the border with Mexico. They saw a 1950 Oldsmobile parked adjacent to a reservoir. The deputies stopped to investigate when they detected two persons moving around outside the vehicle. They parked their patrol vehicle and proceeded to interrogate the male driver, Copeland, and the female passenger, Peterson, who properly identified themselves.

Suspecting the car to be a possible stolen vehicle

7. California Vehicle Code, Section 40508(a)
8. Municipal Court Docket - Appendix "D"
9. Fourth District Appellate Court Opinion - Appendix "A"
10. Appendix "E"
11. Appendices "D" and "F"

because of a slight difference in the name on the registration and that given by Copeland, the officers proceeded to make a radio check on the car and the occupants. The reply indicated that the car was not stolen, but that there was a possible warrant for Copeland's arrest for a failure to appear on May 8, 1967, for the defective muffler. Since nighttime service was authorized on the computerized warrant, Copeland was arrested pursuant thereto. As Copeland left the car upon demand of the officer, said officer noticed a hand-rolled cigarette upon the front seat where Copeland had been located. A subsequent search took place and contraband, consisting of marijuana and amphetemine pills, was discovered within the automobile. Both suspects (Real Parties in Interest) were placed under arrest for suspicion of possession of marijuana [12] and dangerous drugs. [13]

A complaint was issued on June 30, 1967, and a preliminary hearing held on July 28, 1967. The defendants were dismissed and the evidence ordered returned to the District Attorney for destruction in due course. On September 20, 1967, the District Attorney presented the same evidence before the San Diego County Grand Jury and procured a bill of indictment and a Superior Court arrest warrant for the arrest of Richard M. Copeland, Jr. and Sandee L. Peterson. On September 26, 1967, defendant Peterson made a motion to suppress evidence [14] and to set aside the indictment. [15] Both motions were denied by the Superior Court of San Diego, California. On or about November 5, 1967, defendant Peterson filed a petition for a Writ of Prohibition in the

12. Health & Safety Code, Section 11530
13. Health & Safety Code, Section 11910
14. Penal Code, Section 939.6
15. Penal Code, Section 995

Court of Appeal, Fourth Appellate District, Division One. On November 8, 1967, the People of the State of California filed a motion to dismiss Peterson's petition and on November 9, 1967, the court dismissed the petition. On December 15, 1967, Real Parties in Interest filed a motion to suppress the evidence under the new California Penal Code requirements, [16] briefs were submitted, and on January 17, 1968, the Superior Court of the State of California, for the County of San Diego granted the motion to suppress the evidence. On or about January 22, 1968, the People of the State of California filed in the Court of Appeal, Fourth Appellate District, Division One, a "Notice of intention to file (a) petition for Writ of Mandate or Prohibition". The Real Parties in Interest filed an "Opposition to petition for Writ of Mandamus and for Prohibition" on March 4, 1968. Oral argument was heard on May 17, 1968. On June 3, 1968, a timely petition for rehearing was filed by the Real Parties in Interest, and it was denied on June 14, 1968. [17] A timely petition for hearing was filed with the California Supreme Court on June 26, 1968, and was denied on July 10, 1968. [18] The Court of Appeal, Fourth Appellate District, Division One, entered the aforementioned opinion, and the Writ of Prohibition was issued on July 18, 1968. [19]

16. Penal Code, Section 1538.5
17. Appendix "B"
18. Appendix "C"
19. Appendix "G"

## ARGUMENT

### REASONS FOR ALLOWANCE OF THE WRIT

**Can A Court Clerk Issue A Complaint And Warrant Without A Magistrate Seeing Or Having Knowledge Of Their Existence?**

There is a conflict among the states concerning the constitutionality of the delegation of judicial authority to clerks of the court and that, because of this conflict, a citizen may be deprived of his freedom in violation of the Fourteenth Amendment and faced with an unequal protection of the laws dependent upon which state he may presently be within.

The Supreme Court of Minnesota in the case of State v. Paulick, 151 N.W.2d 591, and later in City of St. Paul v. Tobler, 153 N.W.2d 440, declared that a statute authorizing clerks and deputy clerks to issue complaints and warrants for arrest for misdemeanor offenses was in violation of the U.S. Constitution.

The only issue before the Minnesota Supreme Court in the Paulick case (supra) was whether the execution of the complaint before a clerk of the court rather than a magistrate is a denial of defendant's constitutional rights. The court relied upon the United States Supreme Court decisions in:

Giordenello v. U.S., 357 U.S. 480 (1958)
Aguilar v. Texas, 378 U.S. 108 (1964) and,
Jaben v. U.S., 381 U.S. 214 (1965)

to illustrate that a magistrate could not constitutionally delegate his judicial authority to clerks of the court.

As stated in Jaben (supra), Giordenello v. U.S. and Aguilar v. Texas established that a magistrate is intended to make a neutral judgment that resort to further criminal process is justified. A complaint must provide a foundation for that judgment. It must provide the affiant's answer to the magistrate's hypothetical question, "What makes you think that the defendant committed the offense charged?"

In Aguilar v. Texas (supra) (1964), the court insisted that:

> "The magistrate perform his 'neutral and detached' function and not serve merely as a rubber stamp . . . "

In the case of Bowen v. State, 115 P. 376, it states:

> "'Warrant of arrest' is an order in writing in the name of the state, signed by a magistrate, commanding the arrest of the accused. The clerk of the court has no authority to issue a warrant for the arrest of one against whom an information has been filed in such court."

In the case of Johnson v. MacCoy, 278 F.2d 37, at p. 39, it states:

> "The decision (to issue an arrest warrant) is not for a district attorney and only a district attorney to make. We think this is precisely why all persons desiring a complaint to issue must present their evidence before and convince a non-prosecuting

> attorney, i.e., a magistrate. He reviews the facts and exercises his judgment. If it were solely the function of the district attorney to determine what the magistrate may consider, the final veto power would be placed in the hands of the prosecuting officer, rather than a judicial officer. This is contrary to the practice and theory of our system of justice, including the grand jury system."

And, in the case of Bradley v. Fisher, 20 L. Ed. 646 (1872) at p. 651, the court held:

> "A distinction must be observed between excess jurisdiction and the clear absence of all jurisdiction over the subject matter. Where there is clearly no jurisdiction over the subject matter, any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible - -"

In the instant case, the Municipal Court Clerk was the affiant on the complaint. The complaint originated as a computer print-out, and the clerk's knowledge of the facts was limited to the information contained therein. Nevertheless, the evidence indicates that the Clerk stamped the complaint with her facsimile stamp of her signature under penalty of perjury three days before the case docket indicated that a complaint was to issue, and then stamped a computerized warrant with the judge's facsimile signature stamp and delivered both complaint and warrant to the Marshal.

In the case of People v. Sesslin, 68 Cal. 2d 431, the California Supreme Court applied the rules of Giordenello, Aguilar and Jaben (supra) to the California Courts. This was also held to be the law in People v. Montoya, 255 A.C.A. 157 and In Re Schaefer, 134 Cal. App. 499, which applied the Federal Standards under the Fourth Amendment of the United States Constitution to the State of California.

Here the issuance of both complaint and warrant are not only figuratively but literally rubber stamp documents issued not perfunctorily by a magistrate, but perfunctorily by the Clerk untrained in law. For all practical purposes and most important, for all constitutional purposes, the night time arrest of Copeland was warrantless in view of the mechanical manner of issuance of both the complaint and warrant of arrest.

In the case of Providence Tool v. Prader, 32 Cal. 634, it states:

> "The clerk derives all his powers from the statute, and as they are special, no intendments are to be made in support of his acts, but in each case it must appear that what he did was within the authority conferred upon him by the statute -- those acts that properly pertain to the judge alone in exercise of his office are deemed judicial -- clerk by statute only."

In Oliphant v. Whiting, 34 Cal. 25, it states:

> "Clerk not to act judicially unless by statute."

The Court of Appeal, Fourth Appellate District dismissed these arguments by Real Parties in Interest by holding that the Constitutional requirements re: complaints did not apply to the offense of "failure to appear" and that therefore the delegation of authority was not improper.

This holding is not only in direct conflict with the Supreme Court of Minnesota cases of Paulick and Tobler (supra) but completely at odds with the recent trend of the United States Supreme Court to protect an individual's rights under the Fourth Amendment to the United States Constitution as applied via the Fourteenth Amendment.

In the cases of Camara v. Municipal Court, 387 U.S. 523 (1966) and See v. City of Seattle, 387 U.S. 54 (1966) the Supreme Court struck down warrantless searches of dwellings pursuant to state administrative health and safety codes. The majority held that the magistrate need not reassess the basic agency decision to canvass an area but need only examine whether or not the inspector himself is acting under proper authorization. The dissent in Camara and See (supra) thought that even this interposition of a "neutral magistrate" to avoid "rubber stamp" warrants would result in a mechanical issuance of boxcar warrants by magistrates, warrants which "will be printed up in pads of a thousand or more -- with space for a street number to be inserted -- and issued by magistrates in broadest fashion as a matter of course."

Clearly both the majority and dissenters in Camara and See (supra) would find unconstitutional the California law re complaints and warrants for "failure to appear" as enunciated by the California Court of Appeal, Fourth Appellate District.

## CONCLUSION

For the foregoing reasons, the prayer of this Petition for issuance of a Writ of Certiorari to the California Court of Appeal, Fourth Appellate District should be granted.

Respectfully submitted,

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